IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9239 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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EVOLUTION ELECTRONICS PVT LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 9239 of 1999

MR PARESH M DAVE for Petitioner No. 1-2

MR MUKESH R SHAH for Respondent No. 1,2-3

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 26/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

The petitioners have challenged the validity of an order dated 8th September 1999 passed by respondent No. 2. By virtue of the impugned order, the appeal filed by petitioner No. 1 against order-in-original No. 161/D/97-98 dated 27.3.1998 has been dismissed.

2. Learned advocate Shri Paresh Dave appearing for the petitioners has submitted that the appeal had been dismissed because petitioner No. 1 did not deposit a sum of Rs. 1,29,803/- in pursuance of stay order No. 1209/98 dated 24.12.1998 passed by respondent No. 2. It has been submitted by the learned advocate that in fact stay order No. 1209/98 dated 24.12.98, whereby petitioner No. 1 was called upon to deposit a sum of Rs. 1,29,803/-, was never communicated to petitioner No.1. As the said order was not communicated to petitioner No. 1, petitioner No. 1 did not know anything about the stay order and, therefore, petitioner No. 1 did not deposit the amount in question. In the circumstances, it has been submitted that the appeal ought not to have been dismissed on the ground of non-deposit of the amount referred to hereinabove.

3. In pursuance of notice issued by this court, learned Addl. Central Government Standing Counsel Shri M.R. Shah has appeared and has submitted that in fact stay order No. 1209/98 dated 24.12.98 had been communicated to the petitioner. When we called upon him to adduce any evidence in support of his above-referred submission, he was unable to satisfy this court that the said stay order had ever been communicated to petitioner No. 1.

4. We have heard the learned advocates. Learned advocate Shri M.R. Shah appearing for the respondent authorities could not place on record any evidence to show that stay order No. 1209/98 dated 24.12.98 had been communicated to petitioner No. 1. In the circumstances, we are constrained to presume that the stay order was never communicated to petitioner No. 1. If the said order had not been communicated to petitioner No. 1, the appeal filed by petitioner No. 1 could not have been dismissed on the ground of non-deposit of Rs. 1,29,803/-.

5. Looking to the fact that stay order No. 1209/98 dated 24.12.98 had not been served upon the petitioner, in our opinion, the appeal could not have been dismissed by respondent No. 2.

6. It has been, incidentally, submitted by learned advocate Shri Dave appearing for the petitioners that on account of certain subsequent developments in the matter, petitioner No. 1 might not have to pay or deposit any amount. As we are not concerned with the validity of stay order No. 1209/98 dated 24.12.98 and especially when we are not having even a copy of the stay order, we would not like to say anything with regard to the validity of stay order No. 1209/98 dated 24.12.98. However, it would be open to petitioner No. 1 to make an application for reconsideration or modification of order dated 24.12.98 to respondent No. 2 and respondent No. 2 is directed to pass a reasoned order on the application, which might be submitted by petitioner No. 1, after hearing the petitioners.

7. In the circumstances, we direct respondent No. 2 to send a copy of stay order No. 1209/98 dated 24.12.98 to petitioner No. 1 within a period of two weeks from the date of receipt of this order and if petitioner No. 1 wants to submit an application for reconsideration/modification, petitioner No. 1 shall submit such an application to respondent No. 2 within a period of two weeks from the date of receipt of the order dated 24.12.98. If such an application is received by respondent No. 2, respondent No. 2 shall hear the petitioners or a representative of petitioner No. 1 and shall take final decision on the application within a period of four weeks from the date of receipt of the application. Learned advocate Shri Dave has fairly submitted that petitioner no. 1 or its representative shall not pray for any adjournment before respondent No. 2 and shall extend its co-operation to respondent No. 2 so that the application, which might be filed before respondent No. 2, can be decided as expeditiously as possible. Till the said application is decided, petitioner No. 1 shall not be constrained to deposit a sum of Rs. 1,29,803/-, which has been demanded under order dated 24.12.98.

8. In the circumstances, the order dated 8.9.1999 (Annexure G) is quashed and set aside. The petition is allowed. Rule is made absolute to the above extent with no order as to costs.

(hn) (A.R. Dave, J.) (D.A. Mehta, J.)